



PATENT APPLICATION

IN THE U.S. PATENT AND TRADEMARK OFFICE

October 11, 2004

Applicants: Satoshi TAFU et al  
For: HIGH-MINERAL OYSTER EXTRACT AND  
A PROCESS FOR MANUFACTURING THE SAME  
Serial No.: 09/834 290 Group: 1761  
Confirmation No.: 4236  
Filed: April 12, 2001 Examiner: Corbin  
Atty. Docket No.: Ishii Case 15

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**LETTER TO PATENT OFFICE**

Sir:

This request for continued examination (RCE) is being presented in order to have the Declaration Under 37 CFR 1.132, filed on August 6, 2004, entered into the record of the present application. Since the Examiner indicated in the Advisory Action dated September 1, 2004 that the Declaration was not considered, it would be improper for the Examiner to issue a first action final rejection.

As discussed in the previous Response, the Declaration Under 37 CFR 1.132 illustrates the improved bioavailability of the zinc contained in the oyster extract of the present invention.

In the Declaration Under 37 CFR 1.132, three groups of rats were administered different types of zinc diets. The first group of rats was fed a casein-based low zinc diet, the second group of rats was fed a basal diet containing five  $\mu\text{g/g}$  of zinc as zinc carbonate hydroxide and the third group of rats was fed a basal diet containing five  $\mu\text{g/g}$  of zinc as the zinc-rich powder of the present invention. After being administered the diets for four weeks, the blood, liver, muscles and tibia of the rats were isolated, washed, blotted and weighed and the tissue zinc concentrations determined. As

shown in Table 2 in the Declaration, the zinc-rich powder of the present invention resulted in higher tissue zinc concentrations than that of the zinc carbonate hydroxide and the casein-based low zinc diet. This is clearly unexpected since the zinc carbonate hydroxide was administered to the rats in the same amount as the zinc-rich powder of the present invention. It was clearly unexpected that the zinc-rich powder of the present invention, even though it was administered in the same amount as the zinc carbonate hydroxide, would result in improved bioavailability of the zinc in the tissues. This is clearly unexpected and establishes the patentability of the presently claimed invention over the prior art cited by the Examiner.

In the Advisory Action, the Examiner states that there is no comparison between the oyster extract of the present invention and that of the closest prior art. However, Muromachi et al has no disclosure as to how the oyster extract shown there is prepared. However, this reference does disclose that the oyster meat extract disclosed there has a zinc content of 2 g/kg. As admitted by the Examiner, the zinc content of the oyster meat extract of Muromachi et al is less than that of the present invention. Since the oyster extract of Muromachi et al is less than that of the present invention, Applicants respectfully submit that by testing a composition having an equivalent zinc concentration as the composition of the present invention which is tested in the Declaration, in fact tests a comparative composition which is closer to the present invention than that disclosed in the prior art. If the Examiner feels that the comparative zinc carbonate hydroxide composition, having the same zinc concentration as the zinc-rich powder of the present invention, is not closer to the present invention than the oyster extract of Muromachi et al, which has a lower zinc concentration, the Examiner is

respectfully requested to provide reasoning for this position. Favorable consideration is respectfully solicited.

Respectfully submitted,

  
Terryence F. Chapman

TFC/smd

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Encl: None

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**EXPRESS MAILING CERTIFICATE**

Sir:

I hereby certify that the attached paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

FLYNN, THIEL, BOUTELL & TANIS, P.C.

By: *Ana Schipper*

Date: October 7, 2004

Documents attached: RCE Application Transmittal  
dated October 7, 2004  
including enclosures listed thereon

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